

1970

FILE COPY

FILED

OCT 12 1970

NO. 107

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1970

HAZEL PALMER, ET AL.,

Petitioners,

versus

**ALLEN C. THOMPSON, Mayor,
CITY OF JACKSON, ET AL.,**

Respondents.

**MOTION FOR LEAVE TO FILE BRIEF AMICUS
CURIAE AND BRIEF AMICUS CURIAE**

ARMAND DERFNER

JAMES REIF

603 North Farish Street

Jackson, Mississippi

Attorneys for the Canton and

Edwards Amici Curiae

ALIX SANDERE

JOHN McCREERY

10914 Johnson Street

Greenwood, Mississippi

Attorneys for the Greenwood

Amicus Curiae

JOHN THAMES

THOMAS MAYFIELD

206 East Jordan Avenue

West Point, Mississippi

Attorneys for the West Point

Amicus Curiae

In

At

C

C

SUBJECT INDEX

	Page
<i>Interest of Amiel Currier</i>	5
<i>Argument</i>	6
I. Closing a Public Swimming Pool Solely to Prevent Black Citizens from Commingling with White is an Assertion of Inferiority of Black People and Therefore a Denial of Equal Protection Prohibited by the Fourteenth Amendment	6
II. Closing a Public Swimming Pool Solely to Prevent Black Citizens from Commingling with White is a Badge of Slavery Prohibited By the Thirteenth Amendment	18
<i>Conclusion</i>	28
<i>Certificate of Service</i>	30

INDEX TO AUTHORITIES CITED

CASES:	Page
<i>Aaron v. McKinley</i> , 173 F.Supp. 944 (E.D.Ark., 1959), aff'd, sub nom. <i>Faubus v. Aaron</i> , 361 U.S. 197 (1959) _____	13
<i>Adickes v. S. H. Kress & Co.</i> , 398 U.S. _____, 90 S.Ct. 1598 (1970) _____	16
<i>Anderson v. Martin</i> , 375 U.S. 399 (1964) _____	15
<i>Bailey v. Patterson</i> , 199 F.Supp. 595 (S.D.Miss., 1961), vacated and remanded 369 U.S. 31 (1962) _____	17
<i>Bell v. Maryland</i> , 378 U.S. 226 (1964) _____	29
<i>Brown v. Board of Education</i> , 347 U.S. 483 (1954) _____	8, 9
<i>Brown v. Board of Education</i> , 349 U.S. 294 (1955) _____	15
<i>Buchanan v. Warley</i> , 245 U.S. 60 (1917) _____	15
<i>Burton v. Wilmington Parking Authority</i> , 365 U.S. 715 (1961) _____	6, 15
<i>Bush v. Orleans Parish School Board</i> , 187 F.Supp. 42 (E.D.La., 1960), aff'd, 365 U.S. 569 (1961) _____ 188 F.Supp. 916 (E.D.La., 1960), aff'd, 365 U.S. 569 (1961) _____	13 13
<i>Civil Rights Cases</i> , 109 U.S. 3 (1883) _____	18, 25
<i>Clark v. Thompson</i> , 206 F.Supp. 539 (S.D.Miss., 1962), aff'd, 313 F.2d 673 (C.A.5, 1963), cert. den, 376 U.S. 951 (1963) _____	6, 10, 11, 16

SUBJECT TO AUTHORITIES (Continued)

	Page
<i>Cooper v. Aaron</i> , 358 U.S. 1 (1958)	15, 17
<i>Evans v. Abney</i> , 396 U.S. 435 (1970)	12
<i>Evans v. Newton</i> , 382 U.S. 296 (1966)	15
<i>Ex parte Virginia</i> , 100 U.S. 339 (1880)	11, 25
<i>Ferguson v. Gies</i> , 82 Mich. 358, 46 N.W. 718 (1890)	8, 15, 28
<i>Garrett v. Faubus</i> , 230 Ark. 445, 323 S.W.2d 877 (1959)	13
<i>Gayle v. Browder</i> , 352 U.S. 903 (1956)	9
<i>Goss v. Board of Education</i> , 373 U.S. 683 (1963)	15
<i>Green v. County School Board of New Kent County</i> , 391 U.S. 430 (1968)	7
<i>Griffin v. School Board of Prince Edward County</i> , 377 U.S. 218 (1964)	7, 12
<i>Guyot v. Pierce</i> , 372 F.2d 658 (C.A.5, 1967)	16
<i>Hamm v. Virginia State Board of Elections</i> , 230 F.Supp. 156 (E.D.Va., 1964), <i>aff'd</i> . 379 U.S. 19 (1964)	15
<i>Harmon v. Tyler</i> , 273 U.S. 668 (1927)	7
<i>Henderson v. United States</i> , 339 U.S. 816 (1950)	11

SUBJECT TO AUTHORITIES (Continued)

	Page
<i>Hodges v. United States</i> , 203 U.S. 1 (1906)	25, 26
<i>Holmes v. City of Atlanta</i> , 350 U.S. 879 (1955)	9
<i>Holmes v. Danner</i> , 191 F.Supp. 394 (M.D.Ga., 1961)	13
<i>Hunter v. Erickson</i> , 393 U.S. 385 (1969)	8
<i>In re Turner</i> , 24 Fed. Cas. 337 (No. 14,247) (C.C.Md., 1867)	23
<i>Johnson v. Virginia</i> , 373 U.S. 61 (1963)	8, 9
<i>Jones v. Alfred H. Mayer Co.</i> , 392 U.S. 409 (1968)	15, 26, 28
<i>Loving v. Virginia</i> , 388 U.S. 1 (1967)	10
<i>Mayor of Baltimore v. Dawson</i> , 350 U.S. 877 (1955)	9
<i>Monroe v. Board of Commissioners</i> , 391 U.S. 450 (1968)	7
<i>Muir v. Louisville Park Theatrical Assoc.</i> , 347 U.S. 971 (1954)	9
<i>NAACP v. Thompson</i> , 357 F.2d 831 (C.A.5, 1966)	16
<i>New Orleans City Park Improvement Assoc. v. De- tiege</i> , 358 U.S. 54 (1958)	9
<i>Olmstead v. United States</i> , 277 U.S. 438 (1928)	16
<i>People v. Brady</i> , 40 Cal. 198 (1870)	24

SUBJECT TO AUTHORITIES (Continued)

	Page
<i>People v. Washington</i> , 36 Cal. 658 (1869)	23
<i>Plessy v. Ferguson</i> , 163 U.S. 537 (1896)	9, 12, 17, 25, 26
<i>Reitman v. Mulkey</i> , 387 U.S. 369 (1967)	15
<i>Schiro v. Bynum</i> , 375 U.S. 395 (1964)	9
<i>Scott v. Sandford</i> , 19 How. 393 (1857)	8
<i>Shelley v. Kraemer</i> , 334 U.S. 1 (1948)	6, 11
<i>Slaughter-House Cases</i> , 16 Wall. 36 (1873)	11, 24
<i>Strauder v. West Virginia</i> , 100 U.S. 303 (1880)	9, 10, 24
<i>Strother v. Thompson</i> , 372 F.2d 654 (C.A.5, 1967)	16
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968)	7
<i>Turner v. City of Memphis</i> , 369 U.S. 350 (1962)	9
<i>United States v. City of Jackson</i> , 318 F.2d 1 (C.A.5, 1963)	16, 17
<i>United States v. Cruikshank</i> , 25 Fed. Cas. 707 (No. 14,897) (C.C.La., 1874), <i>aff'd</i> 92 U.S. 542 (1876)	23
<i>United States v. Jefferson County Board of Education</i> , 372 F.2d 836 (C.A.5, 1966); <i>aff'd. en banc</i> 380 F.2d 385 (1967)	14

SUBJECT TO AUTHORITIES (Continued)

	Page
<i>United States v. Rhodes</i> , 27 Fed. Cas. 785 (No. 16,151) (C.C.Ky., 1866)	23
<i>Watson v. City of Memphis</i> , 373 U.S. 526 (1963)	15
<i>Williams v. Kansas City</i> , 104 F.Supp. 848 (W.D.Mo., 1952), <i>aff'd</i> . 205 F. 2d 47, (C.A.8, 1953) <i>cert. den.</i> 346 U.S. 826 (1953)	9

STATUTES:

Civil Rights Act, 14 Stat. 27 (1866)	22
Mississippi Code, Sec. 4065.3	16

MISCELLANEOUS:

<i>Congressional Globe</i> ,	
38th Cong., 1st Sess. (1864)	19, 21, 22, 27
38th Cong., 2nd Sess. (1865)	22
39th Cong. 1st Sess. (1866)	19
Emerson, Haber & Dorsen, <i>Political and Civil Rights in the United States</i> , vol. 2 (3d ed.)	15
Kinoy, "The Constitutional Right of Negro Freedom," 21 Rutgers L.Rev. 387 (1967)	19
J. tenBroek, <i>The Anti-Slavery Origins of the Fourteenth Amendment</i> (University of California Press, 1951)	19, 23

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

NO. 107

HAZEL PALMER, ET AL.,
Petitioners,
versus

ALLEN C. THOMPSON, Mayor, City of Jackson,
ET AL.,
Respondents.

**MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE**

Four black citizens of four cities of Mississippi respectfully seek leave to file the attached brief *Amicus Curiae*. The attorney for petitioners has consented; the attorney for respondents has refused consent.

These same four persons made a motion for leave to file an *amicus* brief in support of the petition for certiorari in this cause. That earlier motion was granted. 397 U.S. ____, 90 S.Ct. 1364 (1970).

The *Amici Curiae* are as follows: James Moore, Greenwood, Mississippi; C. O. Chinn, Canton, Missis-

issippi; Willie Crump, Edwards, Mississippi; and Minnie McFarland, West Point, Mississippi. The issue involved in this suit, the closing of the public swimming pools in the City of Jackson after a federal court order desegregating those pools had been obtained, is of vital concern to them because a similar pattern of events has taken place in each of their cities. All four cities formerly had public swimming pools which were used by white people only and which, after attempts to integrate them, were closed or conveyed to private groups that continued the white-only policy.

In three of the cases there has been litigation in which *Amici* were or are named plaintiffs representing the class of all black residents of those cities. There was no litigation in West Point but Mrs. McFarland is the mother of one of the boys who sought to integrate the pool there on July 4, 1964.

Amici seek leave to file this brief in order to demonstrate that the practice of closing public facilities is an integral part of a pattern of racial segregation, to bring to the Court's attention certain lines of analysis and to emphasize particular relevant Congressional debates and early opinions by Justices of this Court.

Respectfully submitted,

ARMAND DERFNER
 JAMES REIF
 603 North Farish Street
 Jackson, Mississippi
*Attorneys for the Canton
 and Edwards Amici Curiae*

ALIX SANDERS
 JOHN McCREERY
 109 1/2 Johnson Street
 Greenwood, Mississippi
Attorneys for the Greenwood
Amicus Curiae

JOHN THAMES
 THOMAS MAYFIELD
 206 East Jordan Avenue
 West Point, Mississippi
Attorneys for the West Point
Amicus Curiae

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

NO. 107

HAZEL PALMER, ET AL.,
Petitioners,
versus

ALLEN C. THOMPSON, Mayor, City of Jackson,
ET AL.,
Respondents.

BRIEF AMICUS CURIAE

ARMAND DERFNER
JAMES REIF
603 North Farish Street
Jackson, Mississippi
*Attorneys for the Canton and
Edwards Amici Curiae*

ALIX SANDERS
JOHN McCREERY
109 1/2 Johnson Street
Greenwood, Mississippi
*Attorneys for the Greenwood
Amicus Curiae*

JOHN THAMES
THOMAS MAYFIELD
206 East Jordan Avenue
West Point, Mississippi
*Attorneys for the West Point
Amicus Curiae*

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

NO. 107

HAZEL PALMER, ET AL.,
Petitioners,

versus

ALLEN C. THOMPSON, Mayor, City of Jackson,
ET AL.,
Respondents.

BRIEF AMICUS CURIAE

THE INTEREST OF AMICI CURIAE IN
PALMER v. THOMPSON

Amici are residents of Canton, West Point, Edwards and Greenwood, towns in Mississippi where the public swimming pools have also been closed to prevent their integration. The facts surrounding the closing of the pools in each of these towns and the resultant litigation in which *Amici* have been involved is set forth in detail in our *Amicus* brief on the petition for certiorari, pp. 1-3. Therefore, we believe we need only note here that the outcome of these struggles to obtain integrated swimming facilities in these other towns hinges on the outcome in *Palmer v. Thompson*.

ARGUMENT

1. CLOSING A PUBLIC SWIMMING POOL SOLELY TO PREVENT BLACK CITIZENS FROM COMMINGLING WITH WHITE IS AN ASSERTION OF THE INFERIORITY OF BLACK PEOPLE AND THEREFORE A DENIAL OF EQUAL PROTECTION PROHIBITED BY THE FOURTEENTH AMENDMENT.

When black plaintiffs obtained a federal court order requiring the integration of the swimming pools operated by the City of Jackson, Mississippi, *Clark v. Thompson*, 206 F.Supp. 539 (S.D.Miss., 1962), *aff'd* 313 F.2d 673 (C.A.5, 1963), *cert. den.* 376 U.S. 951 (1963), the City responded by closing four of its five pools and cancelling the lease it held on the fifth. When the present suit was instituted to compel a reopening of the pools on an integrated basis, two of the defendants, Allen Thompson, Mayor of Jackson, and George Kurts, City Director of Recreation, conceded in their affidavits that the pools were closed in order to prevent racial integration. Although the United States Court of Appeals for the Fifth Circuit was almost equally divided on the legal issues in this case, it was in unanimous agreement that the pools were closed by the City to prevent the commingling of the races.¹

¹ Respondents have claimed that while it is true the pools were closed to enforce separation of the races, the named defendants did not act with the intention of discriminating against black people. This attempted distinction is a differentiation without a difference. Whether the respondents closed the pools because of the racial prejudice that they themselves felt as individuals or whether they closed the pools because of the racial prejudice of other whites in Jackson is of no constitutional moment. "It is of no consolation to an individual denied the equal protection of the laws that it was done in good faith." *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 725 (1961). The fact is that racial prejudice caused the City to close a public facility in order to prevent its integration. In *Shelley v. Kraemer*, 334 U.S. 1 (1948), that the judge who enforced the restrictive covenant did not intend to discriminate

The main thrust of the majority opinion below was that blacks were not denied equal protection because the closings operated equally on black and white alike: neither had the opportunity to use the pools. 419 F.2d 1222, 1225-1227 (C.A.5, 1969). Moreover, if black people could not gain access to privately operated pools, that was merely the result of economic disparity, a kind of discrimination against which the equal protection clause offers no protection. 419 F.2d at 1227.

The majority recognizes that black people, unlike their white counterparts, cannot turn to the many privately operated pools in Jackson now that the public swimming facilities are closed. The majority has misunderstood, however, the nature of the discrimination that has wrought this condition. It is not economic, it is racial. There are many black residents of Jackson who now wish to join private pools and who have the money to do so. The reason that no black person has the use of a private swim club or pool is that black people are excluded from them solely because of their race. In *Griffin v. School Board of Prince Edward County* this Court observed that closing the Prince Edward public schools "bears more heavily on Negro children in Prince Edward County since white children there have accredited private schools which they can attend, while colored children until very recently have had no available private schools, and even the school they now attend is a temporary expedient."

against the petitioners was irrelevant. It was enough that in enforcing the racial covenant he had given his official imprimatur to the racial prejudices of private individuals. Cf. *Terry v. Ohio*, 392 U.S. 1, 13 (1968). Similarly, "free transfer" and "freedom-of-choice" school plans have been declared a denial of equal protection even where it is private individuals, parents and children, who are motivated by prejudice, rather than the governmental agency, the school board. See, E.g., *Monroe v. Board of Commissioners*, 391 U.S. 450 (1968); *Green v. County School Board*, 391 U.S. 430 (1968). Cf. *Harmon v. Tyler*, 273 U.S. 668 (1927).

377 U.S. 218, 230 (1964). *Cf. Hunter v. Erickson*, 393 U.S. 385, 391 (1969). Similarly, closing the Jackson public swimming pools bears more heavily on black children since white children there have privately owned pools of which they can make use, while black children are excluded from all privately operated pools solely because of their race. The majority below was in error when it concluded that the closing affected blacks the same as whites.

Nevertheless, even if that majority has been correct in its assumption that the tangible effect of the closings was the same on both races, the closings here would still deny black people equal protection. This is best seen when the focus is on the act of closing, itself, rather than on the subsequent non-operation of the pools.

After *Brown v. Board of Education*, 347 U.S. 483 (1954), this Court held that racial segregation in a wide variety of public facilities was a denial to black people of equal protection.² The holding in each case was not premised on a finding of a tangible or material inequality in the facility. In *Johnson v. Virginia*, for example, there was no measurable difference to a black man whether he sat on the right side of the courtroom or on the left. Rather, these decisions were based on the conclusion that "separate . . . facilities are inherently unequal." *Brown v. Board of Education*, 347 U.S. at 495. (Emphasis added.) To intentionally separate black people from white is to affirm the inferiority of the former. The prohibition of integration is a reassertion of the fundamental premise of *Dred Scott v. Sandford*: black people are "beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations." 19 How. 393, 407 (1857). See *Fer-*

guson v. Gies, 82 Mich. 358, 365-8, 46 N.W. 718, 720-1 (1890). This is true whether the prohibition is by way of segregation or by way of closing to avoid racial mixing. The closing of the Jackson pools was premised on the *Dred Scott* doctrine and a step toward its revitalization. It was a declaration by the city that blacks are so inferior that they could not be allowed to swim in the same pools as whites, for fear that persons of different races might come into physical contact. See *Williams v. Kansas City*, 104 F.Supp. 848, 852-3 (W.D.Mo., 1952), *aff'd.* 205 F.2d 47 (C.A.8, 1953), *cert. den.* 346 U.S. 826 (1953).² It was precisely this kind of move backward toward slavery that the Fourteenth Amendment was designed to prevent:

The words of the amendment, it is true are prohibitory, but they contain a necessary implication of a positive immunity, a right, most valuable to the colored race, — the right to exemption from unfriendly legislation against them distinctively as colored, — exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps toward reducing them to the condition of a subject race. *Strauder v. West Virginia*, 100 U.S. 303, 307-8 (1880).

² *Muir v. Louisville Park Theatrical Association*, 347 U.S. 971 (1954) (city lease of park facilities); *Mayor of Baltimore v. Dawson*, 350 U.S. 877 (1955) (beaches); *Holmes v. City of Atlanta*, 350 U.S. 879 (1955) (golf courses); *Gayle v. Browder*, 352 U.S. 903 (1956) (busses); *New Orleans City Park Improvement Association v. Detiege*, 358 U.S. 54 (1958) (parks); *Turner v. City of Memphis*, 369 U.S. 350 (1962) (administrative regulation requiring segregation in airport restaurant); *Johnson v. Virginia*, 373 U.S. 61 (1963) (courtrooms); *Schiro v. Bynum*, 375 U.S. 395 (1964) (auditoriums).

³ This reality cannot be answered by the claim that only black people see the closing as attaching to them a stigma, that white people do not see the closing as an assertion of white supremacy. This kind of allegation, first raised in *Plessy v. Ferguson*, 163 U.S. 537, 551 (1896), reflecting as it does the insensitivity and lack of understanding by whites of black people, has been put to rest. *Brown v. Board of Education*, *supra*.

The Jackson pools were closed solely because black people were about to use those which had always been reserved to whites. The pools would not have been closed if white people who, for whatever reason, had never used the "white" pools before were about to begin making use of them.⁴ The closings therefore were a singling out of black people, a treatment prohibited by the Fourteenth Amendment. For "[t]he very fact that colored people are singled out . . . because of color, though they are citizens . . . is practically a brand upon them, affixed by the law, an assertion of their inferiority. . . ." *Strauder v. West Virginia*, 100 U.S. at 308.

The closings acted as punishment of the black people who had sought to integrate Jackson's pools. The closings effectively thwarted their constitutionally protected attempt to integrate. Moreover, black people who formerly had the use of one pool now have the use of none; they have only the animosity of whites whose use of public pools has also been foreclosed and who recognize that the

⁴ In this respect, it can be seen that the classification discussed by the majority below, which lead to its ultimate holding, was essentially artificial. Not only did the majority err in its conclusion as to the relative effect of the closings on the two groups, white and black, that were subject to the closings, see fn. 1, *supra*, it also erred in comparing those two groups in the first instance. The meaningful comparison is between the black people who sought originally in *Clark v. Thompson*, *supra*, to use the formerly all-white pools and any all-white group that might have sought to use those same pools for the first time. The pools were closed in the former instance; they would not be closed in the latter. Analyzing the problem in this way, rather than in terms of the majority's largely obfuscatory classification below, makes clear the denial to black people of equal protection. The problem here is similar to that in *Loving v. Virginia*, 388 U.S. 1 (1967). Virginia claimed that the statute forbidding interracial marriages applied equally to both spouses and thus denied no one equal protection. But Virginia, like respondent here, was talking about the wrong classification. Instead of comparing the effect of the statute on the wife with its effect on the husband, proper analysis called for a comparison of a black woman's ability to marry a white man with a white woman's ability to marry the same man and, conversely, a comparison of a black man's ability to marry a white woman with a white man's ability to marry the same woman.

closings are traceable to the efforts of the black plaintiffs in *Clark v. Thompson*, *supra*.⁵ The black people of Jackson would be better off today if the complaint in *Clark v. Thompson* had never been filed. They have suffered substantially, both physically and psychologically, because of that litigation. And yet the Fourteenth Amendment was designed to relieve black people of special burdens:

No one can fail to be impressed with the one pervading purpose found in all the [Wartime] Amendments, lying at the foundation of each, and without which none of them would have been suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over them. [*Slaughter-House Cases*, 16 Wall. 36, 71 (1873).]

This language has been quoted so frequently it has become cliché and, in that way, curiously devoid of meaning. But that meaning must be revitalized. If the language of the *Slaughter-House Cases* is something more than cliché, if the Wartime Amendments "were intended to take away all possibility of oppression by law because of race or color," *Ex parte Virginia*, 100 U.S. 339, 345 (1880), then surely the oppression that the black people of Jackson have suffered since the "victory" in *Clark v. Thompson*, is a violation of the Fourteenth Amendment.

The argument of the respondent here, that the closing

⁵ While it is true that whites no longer have the use of public pools either, "Discriminations that operate to the disadvantage of two groups are not less to be condemned because their impact is broader than if only one were affected." *Henderson v. United States*, 339 U.S. 816, 825-6 (1950). Cf. *Shelley v. Kraemer*, 334 U.S. 1, 21-2 (1948). See Fn. 1.

applies equally to black and white, is hauntingly familiar. Its origins lie with the majority opinion in *Plessy v. Ferguson*, 163 U.S. 537 (1896). Because its separate-but-equal claim has now been overruled, it is proper and instructive to turn to the dissenting opinion in *Plessy* of the first Mr. Justice Harlan:

It was said in argument that the statute of Louisiana does not discriminate against either race, but prescribes a rule applicable alike to white and colored citizens. But this argument does not meet the difficulty. Every one knows that the statute in question had its origin in the purpose, not so much to exclude white persons from railroad cars occupied by blacks, as to exclude colored people from coaches occupied by or assigned to white persons. . . . *The thing to accomplish was, under the guise of giving equal accommodation for whites and blacks, to compel the latter to keep to themselves while travelling in railroad passenger coaches.* . . . (163 U.S. at 556-7 (Emphasis added.)

Just as the Louisiana statute in *Plessy* sought to compel black people to remain apart from whites, the action of the City of Jackson in closing the pools was designed to achieve the same result. Under Mr. Justice Harlan's analysis the closings are a clear denial of equal protection.

In *Evans v. Abney*, this Court assumed that the closing of a publicly owned facility solely to avoid the effect of a prior court order directing that the facility be integrated would violate the Equal Protection Clause. 396 U.S. 435, 445 (1970). The assumption is supported by prior case law. In *Griffin v. School Board of Prince Edward County*, 377 U.S. 218 (1964), this Court held that the closing of public schools in the county to avoid their integration was a

denial to the black plaintiffs of equal protection. While schools in other counties in Virginia remained open and while the state was attempting to aid private schools through the use of public funds, these facts do not distinguish *Griffin* from the present case. Its fundamental thrust is just as relevant where, as here, Jackson has closed all its pools to ensure that white and black children in Jackson will not under any circumstances use the same pool:

Whatever nonracial grounds might support a State's allowing a county to abandon public schools, the object must be a constitutional one, and grounds of race and opposition to desegregation do not qualify as constitutional. (377 U.S. at 231).

To the same effect is *Aaron v. McKinley*, 173 F.Supp. 944 (E.D.Ark., 1959), *aff'd*, *sub nom. Faubus v. Aaron*, 361 U.S. 197 (1959).

In *Bush v. Orleans Parish School Board*, 187 F.Supp. 42 (E.D.La., 1960), *aff'd* 365 U.S. 569 (1961) and 188 F.Supp. 916 (E.D.La., 1960), *aff'd* 365 U.S. 569 (1961), acts of the Louisiana Legislature giving the Governor the power to close all schools in the state if any one of them was integrated were declared to be in violation of the Equal Protection Clause. In *Holmes v. Danner*, 191 F. Supp. 394, 412-3, 415-6 (M.D.Ga., 1961), the Governor of Georgia was enjoined from closing the state university to prevent its integration. *Garrett v. Faubus*, 230 Ark. 445, 323 S.W.2d 877 (1959), dealt with the Arkansas statute (later declared unconstitutional in *Aaron v. McKinley*, *supra*) giving the Governor authority to close any schools whenever he determined there was an impending threat

to law and order or that an effective educational system could not be maintained due to racial integration. Although the Court found no constitutional infirmity, it said: "If Act 4 is viewed as giving the Governor the power to close all public schools permanently, it would, we concede, be in violation . . . of the decree in the *Brown* case." 323 S.W.2d at 880.

The majority below has suggested that race may sometimes be a permissible consideration. The definitive analysis of this question is by Judge Wisdom in *United States v. Jefferson County Board of Education*, 372 F.2d 836, 876-8 (C.A.5, 1966), *aff'd en banc* 380 F.2d 385 (1967). Part of the first paragraph of the discussion is a proper summary:

The Constitution is both color blind and color conscious. To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination. *The criterion is the relevancy of color to a legitimate governmental purpose.*" (372 F.2d at 876.) (Emphasis added.)

Applying that standard to the case at bar it is clear that race is irrelevant and therefore an impermissible consideration. Consideration of race in closing Jackson's pools results only in the imposition of the burden or stigma of inferiority. "The prejudice against association in public places with the negro, which does exist . . . is unworthy of our race; and it is not for the courts to cater to or temporize with a prejudice which is not only not humane,

but unreasonable. . . ." *Ferguson v. Gies*, 82 Mich. 358, 46 N.W. 718, 721 (1890). See, e.g., *Anderson v. Martin*, 375 U.S. 399 (1964); *Hamm v. Virginia State Board of Elections*, 230 F.Supp. 156 (E.D.Va., 1964), *aff'd* 379 U.S. 19 (1964); *Goss v. Board of Education*, 373 U.S. 683, 688 (1963).

In closing Jackson's pools, respondents have simply employed a different technique in the continuing struggle to preserve the wall of racial separation, a variation on an old theme.⁶ Respondents have contended, however, that while the pools were closed to prevent racial mixing, it was only to preserve law and order and to avoid the financial loss that the City would incur with integration. These claims are not constitutionally acceptable. Law and order is not an acceptable reason for preserving separation of the races by continuing segregation. *Cooper v. Aaron*, 358 U.S. 1, 16 (1958); *Watson v. City of Memphis*, 373 U.S. 526, 535 (1963); *Brown v. Board of Education*, 349 U.S. 294, 300 (1955); *Buchanan v. Warley*, 245 U.S. 60, 81 (1917). It cannot then be an acceptable justification for preserving the wall of separation by closing the facility involved. Similarly, financial expense is insufficient justification for keeping the races apart by continuing segregation. "[V]indication of conceded constitutional rights cannot be made dependent upon any theory that it

⁶Legitimized by the *Dred Scott* axiom that black people were "altogether unfit to associate with the white race," 19 How. at 407, the struggle gained impetus from the Black Codes of the post-Civil War era and from the "separate-but-equal" doctrine of *Plessy*. The sixteen years since *Brown* have seen a frantic effort by racial separatists to stay one step ahead of the Wartime Amendments. See e.g., 2 Emerson, Haber and Dorsen, *Political and Civil Rights in the United States* (Third Ed.) 1630-65; *Jones v. Alfred H. Meyer Co.*, 392 U.S. 409, 448, fn. 5 (1968) (concurring opinion of Mr. Justice Douglas). In light of *Burton v. Wilmington Parking Authority*, *supra*, *Evans v. Newton*, 382 U.S. 296 (1966), *Reitman v. Mulkey*, 387 U.S. 369 (1967) and *Jones v. Alfred H. Meyer Co.*, *supra*, closing a facility now appears to be the only remaining way of avoiding integration.

is less expensive to deny than to afford them." *Watson v. City of Memphis*, 373 U.S. at 537. Financial expense must therefore be insufficient excuse for keeping the races apart by closing the facility. As in *Watson*, this Court should "not assume that the citizens . . . accept the questionable premise implicit in this argument or that either the resources of the city are inadequate, or its government unresponsive, to the needs of all its citizens." 373 U.S. at 537-8. Therefore, because consideration of race furthers no constitutionally acceptable purpose, but serves instead to stigmatize black people with a badge of inferiority, closing Jackson's pools solely to avoid integration is a denial of equal protection.

All this is particularly apt where, historically, the State of Mississippi, the City of Jackson and Mayor Thompson, in particular, have fomented and encouraged the race prejudice that respondents now see as justification for the closing. The role of the State of Mississippi need not be discussed at length. It is sufficient to point to its "steel-hard, inflexible, undeviating official policy of segregation," *United States v. City of Jackson*, 318 F.2d 1 (C.A.5, 1963) exemplified by its segregation laws,⁷ particularly Section 4065.3 of the Mississippi Code, which required Mayor Thompson to prevent integration of Jackson's pools. As for the City, it was a Jackson ordinance requiring segregation of public swimming pools that lead to the *Clark v. Thompson* lawsuit. And Mayor Thompson has, over and over again, encouraged race prejudice and segregation in Jackson. See, e.g., *Strother v. Thompson*, 372 F. 2d 654 (C.A.5, 1967); *Guyot v. Pierce*, 372 F.2d 658 (C.A.5, 1967); *NAACP v. Thompson*, 357 F.2d 831

⁷ See *Adickes v. S. H. Kress & Co.*, 398 U.S. ___, 90 S.Ct. 1598, 1623-25 (1970) (Opinion of Mr. Justice Brennan).

(C.A.5, 1966); *United States v. City of Jackson*, *supra*; *Bailey v. Patterson*, 199 F.Supp. 595 (S.D.Miss., 1961), *vacated and remanded* 369 U.S. 31 (1962). See also Mayor Thompson's statements about the swimming pools quoted in Exhibit B of the affidavit of Carolyn Stevens, a petitioner here. Governmental encouragement of racial bigotry is, of course most unfortunate. As Mr. Justice Brandeis observed in another context, in a now famous dissent: "Our government is the potent, the omnipresent, teacher. For good or for ill, it teaches the whole people by its example." *Olmstead v. United States*, 277 U.S. 438, 485 (1928). Here, Mississippi the City of Jackson and Mayor Thompson have taught the citizens of Jackson only racial mistrust and prejudice. Having done so, they cannot be heard to complain if their teachings are reflected in the attitudes of the people. *Cooper v. Aaron*, 358 U.S. 1, 15. And See the concurring opinion of Mr. Justice Frankfurter. 358 U.S. at 19-23.

In reviewing the decision of the Court of Appeals, it is worth recalling the words of the first Mr. Justice Harlan: what he said in *Plessy v. Ferguson* proved to be prophetic. His words are applicable to the decision below in this cause:

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in *Dred Scott*.

. . .

If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race. We boast of the freedom en-

joyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow-citizens, our equals before the law. The thin disguise of "equal" accommodations for passengers in railroad coaches will not mislead any one, nor atone for the wrong this day done. (163 U.S. at 559, 562.)

II. CLOSING A PUBLIC POOL SOLELY TO PREVENT BLACK CITIZENS FROM COMMINGLING WITH WHITE IS A BADGE OF SLAVERY PROHIBITED BY THE THIRTEENTH AMENDMENT.

Section I of the Thirteenth Amendment provides:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted shall exist within the United States, or any place subject to their jurisdiction.

The scope and meaning of this section have received little judicial or academic study in recent years. This inattention has allowed its thrust to become obscured with the passage of time. "This amendment, as well as the Fourteenth, is undoubtedly self-executing without any ancillary legislation, so far as its terms are applicable to any existing state of circumstance." *Civil Rights Cases*, 109 U.S. 3, 20 (1883).

To what circumstances was the amendment intended to apply? We first note that it is an affirmative grant of national power, "for the amendment is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involun-

tary servitude shall not exist in any part of the United States." *Id.*, at 20. The amendment is therefore distinguished from the Fourteenth. Whereas the latter has been interpreted as making national power secondary or corrective, federal power under the Thirteenth is direct and primary. The amendment did not merely secure rights by way of prohibition; it affirmatively created the right of the black man in America to be free.⁸

The relevant Congressional debates and opinions of this Court show that rather than mere release from physical bondage, the Thirteenth Amendment was intended to achieve a revolution in federalism; it was a "charter of liberty,"⁹ prohibiting all badges of human slavery as well as the formal institution itself. It was a broad grant of national power freeing the black man from his white master but also from all the incidents of their former relationship.¹⁰

There were three Congressional debates on the amendment. The first, in the spring of 1864, and the second, a year later, occurred before its passage. The third debate took place in December, 1865 and the spring of 1866, after ratification of the amendment.

In the first two debates proponents and opponents of the amendment agreed that it would do more than simply abolish the formal institution of slavery. Fernando Wood of New York, a leading opponent, conceded it was designed to achieve "a revolution in social . . . rights."¹¹

⁸ See Kinoy, "The Constitutional Right of Negro Freedom," 21 Rutgers L. Rev. , 387 (1967).

⁹ *Congressional Globe*, 39th Cong., 1st Sess., 1151 (1866).

¹⁰ See J. tenBroek, *The Antislavery Origins of the Fourteenth Amendment* (University of California Press, 1951), pp. 137-152.

¹¹ *Cong. Globe*, 38th Cong., 1st Sess., 2941 (1864).

¹² *Id.*, at 2983.

¹³ *Id.*, 2d Sess., 177, 179-80, 216 (1865).

Robert Mallory of Kentucky noted: "You propose to leave them [the emancipated blacks] where they are freed, *and protect them in their right to remain there.*" (Emphasis added.)¹² Opponents acknowledged that the Thirteenth Amendment would not merely eliminate slavery but would make black people the equals of white, as a matter of law.¹³ The past one hundred years have proven conclusively that mere manumission would not achieve that equality; more, then, must have been intended by the amendment.

Abolitionists and their supporters saw the amendment not merely as partial fulfillment of their aims, but as the full, meaningful consummation of their struggle. James F. Wilson of Iowa, co-author of the amendment, opened the debate in the House of Representatives. He noted that the purpose of the amendment was to "stamp universal freedom on our national Constitution."¹⁴ After speaking of the constitutional rights which slavery had disregarded and practically destroyed for black people, Wilson said: "It is quite time, Sir, for the people of the free states to look these facts squarely in the face and provide a remedy which shall make the future safe for the rights of each and every citizen."¹⁵

E. C. Ingersoll of Illinois agreed that the amendment accomplished more than abolition of the formal institution of human slavery. He argued that it meant

freedom of speech, . . . the right to proclaim the eternal principles of liberty, truth and justice in Mobile, Savannah, or Charleston with the same freedom and security as . . . at the foot of Bunker Hill Monument. . . . [It] will secure

¹⁴ *Id.*, 1st Sess., 1200.

¹⁵ *Id.*, at 1202-3.

to the oppressed slave his natural and God-given rights . . . a right to live, and live in a state of freedom . . . a right to breath the free air, and to enjoy God's free sunshine . . . a right to till the soil, to earn his bread by the sweat of his brow, and to enjoy the rewards of his own labor . . . A right to the endearments and enjoyment of family ties. . . . [It will mean] that the rights of mankind, without regard to color or race, are respected and protected. (*Cong. Globe*, 38th Cong., 1st Sess., 2990.)

William D. Kelley of Pennsylvania concluded that the amendment was designed to accomplish "the political and social elevation of Negroes to all the rights of white men." *Id.*, at 2987. Charles Sumner of Massachusetts, in supporting the Amendment, said:

Beyond my general desire to see an act of universal emancipation that shall at once and forever settle this great question . . . there are two other ideas which are ever present to my mind as a practical legislator: first, to strike at slavery wherever I can hit it; and secondly, to clean the statute-book of all existing supports of slavery, so that it may find nothing there to which it may cling for life. To do less than this at the present moment, when slavery is still menacing, would be an abandonment of duty.

. . . Too well I know the vitality of slavery with its infinite capacity of propagation, and how little slavery it takes to make a slave State with all the cruel pretensions of slavery. (*Cong. Globe*, 38th Cong., 1st Sess., 1482.)

The belief that the Thirteenth Amendment was a broad charter going far beyond the mere manumission of black

people was repeated throughout the debates.¹⁶ The clearest declaration of the meaning of the amendment was by Senator Harry Wilson of Massachusetts. After noting that slavery was the "prolific mother" of mistreatment of the black man, he asserted:

If this amendment shall be incorporated by the will of the nation into the Constitution of the United States, it will obliterate the last lingering vestiges of the slave system; its chattelizing, degrading and bloody codes; its dark, malignant barbarizing spirit; all it was and is, everything connected with it or pertaining to it. . . . (*Cong. Globe*, 38th Cong., 1st Sess., 1324.)

Here at once, in language clear and unmistakeable, is the full meaning of the Thirteenth Amendment.

The debates demonstrate a recognition by the Congress that manumission itself would not mean an end to the "cruel pretensions of slavery," that even after the formal institution had ended, onerous disabilities would still attend a black man's life. So the amendment was written in language by which its framers sought to insure practical freedom, rather than the "mere paper guarantee"¹⁷ of freedom.¹⁸ The Thirteenth Amendment freed the slaves;

¹⁶ See, e.g., *Cong. Globe*, 38th Cong., 2d Sess., for the remarks of Godlove S. Orth of Indiana, 142-3; John A. Kasson of Iowa, 193; Nathaniel B. Smithers of Delaware, 217; Id., 1st Sess., John B. Henderson of Missouri, 1465; Daniel Morris of New York, 2615; John F. Farnsworth of Illinois, 2979.

¹⁷ *Cong. Globe*, 39th Cong., 1st Sess., 1151.

¹⁸ As noted earlier, there was a third Congressional debate over the scope of the Thirteenth Amendment. Opponents, for the first time, argued that it had a narrow meaning. This was a marked departure from the sentiments they had expressed in the earlier debates. Crucial to an understanding of this change in attitude is the recognition that this third discussion occurred *after* passage of the amendment, during debate over the 1866 Civil Rights Act, 14 Stat. 27. Opponents of the bill saw only one chance of defeating it: they would try to show that it was not authorized by the Thirteenth Amendment. To do this however, they would be forced to repudiate the broad interpretation they had given the amendment only a year earlier. Thus, political considerations

it freed them not only from their individual masters but from the oppressions that were incidents of their bondage. See J. tenBroek, *The Anti-Slavery Origins of the Fourteenth Amendment*, pp. 148-9.

This conclusion is further supported by opinions of this Court and its individual Justices. *United States v. Rhodes*, 27 Fed. Cas. 785 (No. 16,151) (C.C.Ky., 1866), was the first case involving a construction of the amendment. Justice Swayne, as Circuit Justice, declared of the new guarantee:

The emancipation which it wrought was an act of great national grace, and was doubtless intended to reach further in its effects as to every one within its scope, than the consequences of a manumission by a private individual. (27 Fed. Cas. at 794.)

The amendment was also broadly construed by Chief Justice Chase in *In re Turner*, 24 Fed. Cas. 337 (No. 14,247) (C.C.Md., 1867), and by Mr. Justice Bradley in *United States v. Cruikshank*, 25 Fed. Cas. 707 (No. 14,897) (C.C.La., 1874), *aff'd.* 92 U.S. 542 (1876).¹⁹ See also *People v. Washington*, 36 Cal. 658, 665 (1869) where the Court noted that the first section of the amendment was "self-executing in the emancipation of the persons then held in slavery, and in providing for the inviolability of the personal liberty of all for the future." (Emphasis

explained the narrower interpretation by some during this debate. Supporters of the bill, in giving the amendment a broad sweep, were consistent with the earlier understanding of it. See J. tenBroek, *op. cit.*, pp. 156-180.

¹⁹ The specific issue in each of these circuit cases was the constitutionality of an Act of Congress. But in passing on that precise question, each court found it necessary to discuss the scope of the Thirteenth Amendment.

added.) But compare *People v. Brady*, 40 Cal. 198, 215-6 (1870).

In the *Slaughter-House Cases*, this Court observed that the amendment was a "simple declaration of the personal freedom of all the human race" whose "obvious purpose was to forbid all shades and conditions of African slavery." 16 Wall. 36, 69. Further, its purpose was

the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. (16 Wall. at 71.)

It was thus recognized, in the first case before the full Court involving the Thirteenth Amendment, that it was designed not only to confirm the Emancipation Proclamation but, also, to protect against any steps that would tend to re-establish slavery by singling out the black man as inferior.

In *Strauder v. West Virginia*, 100 U.S.303, 306 (1880) and in *Ex parte Virginia*, 100 U.S.339, 344-5 (1880), this Court affirmed that the purpose of both the Thirteenth and Fourteenth Amendments was to secure to black people equality of civil rights with all other persons.

In the majority opinion in the *Civil Rights Cases*, 109 U.S. 3 (1883), Mr. Justice Bradley, speaking of the Thirteenth Amendment, said:

By its own unaided force and effect it abolished slavery, and established universal freedom. (109 U.S. at 20.)

Mr. Justice Bradley then re-emphasized the point. The amendment, he observed, "may be regarded as nullifying all State laws which establish or uphold slavery." *Ibid.* But the amendment did not merely abolish human slavery; it went further: "[I]t was a reflex character also, establishing and decreeing universal civil and political freedom throughout the United States." *Ibid.* Civil and political freedom is much more than manumission.

In dissent Mr. Justice Harlan disagreed (on the Thirteenth Amendment issue) *only* on the question of whether refusal to a person of accommodations in an inn, public conveyance, or place of public amusement constituted a badge of slavery. He was in full agreement with the majority on the fundamental meaning of the amendment. See 109 U.S. at 34-5.²⁰

In *Plessy v. Ferguson*, 163 U.S. 537 (1896), the Louisiana statute compelling segregation of the races in railroad cars was attacked as repugnant to the Thirteenth Amendment. The disagreement between the majority and the dissent was on the question of whether such segregation tended to re-establish slavery; *i.e.*, whether it constituted a badge of slavery. But both Mr. Justice Brown for the majority and Mr. Justice Harlan in dissent believed the amendment prohibited all badges and incidents

²⁰ In his later dissent in *Hodges v. United States*, 203 U.S. 1 (1906), Mr. Justice Harlan explained the majority opinion in the *Civil Rights Cases*, *supra*, and his agreement with it: "As we have seen, this court has held that the Thirteenth Amendment, by its own force, without the aid of legislation, not only conferred freedom upon every person (not legally held in custody for crime) within the jurisdiction of the United States, but the right and privilege of being free from the badges or incidents of slavery. . . . I stood with the court in the declaration that the Thirteenth Amendment not only established and decreed universal, civil and political freedom throughout this land, but abolished the incidents or badges of slavery. . . ." 203 U.S. at 35, 32. (Emphasis added.)

of slavery. Mr. Justice Harlan reiterated the views expressed in the *Civil Rights Cases*, *supra*:

The Thirteenth Amendment does not permit the withholding or the deprivation of any right necessarily inhering in freedom. It not only struck down the institution of slavery as previously existing in the United States, but it prevents the imposition of any burdens or disabilities that constitute badges of slavery or servitude. It decreed universal civil freedom in this country. This court has so adjudged. [*Plessy v. Ferguson*, 163 U.S. at 555 (dissenting opinion of Mr. Justice Harlan).]

In *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 441-3, fn. 78 (1968), this Court approved the statement of the first Mr. Justice Harlan (joined by Mr. Justice Day) in dissent in *Hodges v. United States* that the interpretation of the amendment by the majority there was "entirely too narrow and . . . hostile to the freedom established by the Supreme Law of the land." 203 U.S. 1, 37. This Court then declared:

The conclusion of the majority in *Hodges* rested upon a concept of congressional power under the Thirteenth Amendment irreconcilable with the position taken by every member of this Court in the *Civil Rights Cases* and incompatible with the history and purpose of the Amendment itself. Insofar as *Hodges* is inconsistent with our holding today it is hereby overruled. (392 U.S. at 442-3, fn. 78.)

We respectfully submit that an interpretation of Section 1 of the Amendment excluding from its coverage the in-

cidents and badges of slavery would also be hostile to the freedom that it was designed to create, irreconcilable with the opinions of this Court and incompatible with the history and purpose of the amendment itself. The debates and judicial analysis demonstrate that the amendment was intended as a broad grant of national power, forbidding slavery, but also forbidding its onerous incidents. The freedom which the amendment made the right of every black man was freedom from "everything connected with ... or pertaining to"²¹ slavery.

It follows that the closing of Jackson's swimming pools solely to preserve the separation of the races is prohibited by the amendment. As was demonstrated in POINT I, *supra*, the closings proceed upon the assumption that black people are "beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations." *Dred Scott v. Sandford*, 19 How. at 407. The theory of racial inferiority was the prop, the justification, for the entire institution of human slavery. Indeed, each was the support of the other. A municipal act which proceeds upon the theory is, therefore, a relic of the institution and, as such, prohibited by the Thirteenth Amendment.

It is not contended that the amendment itself reaches every act implying the inferiority of the black man. Purely private acts may be beyond its scope. See *Ferguson v. Gies*, 82 Mich. 358, 46 N.W. 718, 721 (1890). But the case at bar is not within that category. The action challenged was an act by public officials with respect to facilities

²¹ *Cong. Globe*, 38th Cong., 1st Sess., 1324.

owned and operated by the city and used by thousands of people. In *Jones v. Alfred H. Mayer Co.*, *supra*, the majority acknowledged that discrimination in the sale of private housing is a relic of slavery. See also the concurring opinions of Mr. Justice Douglas in *Jones*, 392 U.S. at 444-449, and in *Bell v. Maryland*, 378 U.S. 226, 246-249 (1964). If forced separation of the races is a substitute for the Black Codes which were, in turn, substitutes for slavery itself, it follows inexorably that the act here of closing public pools solely to preserve the wall of separation between the races is a relic of slavery. As such, it is forbidden by the Thirteenth Amendment.

CONCLUSION

For the reasons above, petitioners are entitled to a reversal of the decision below and to a prompt reopening of Jackson's swimming pools.

Respectfully submitted,

(Signed)

ARMAND DERFNER

JAMES REIF

603 N. Farish Street

Jackson, Mississippi

Attorneys for the Canton

and Edwards Amici Curiae

ALIX SANDERS
JOHN McCREERY

109 1/2 Johnson Street
Greenwood, Mississippi
*Attorneys for the Greenwood
Amicus Curiae*

JOHN THAMES
THOMAS MAYFIELD

206 East Jordan Avenue
West Point, Mississippi
*Attorneys for the West
Point Amicus Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on this day of July, 1970, three copies of this Brief Amicus Curiae were mailed postage prepaid to E. W. Stennett, Esq., City Attorney, Jackson, Mississippi, and Thomas H. Watkins, Esq., Suite 800, Bankers Trust Plaza Building, Jackson, Mississippi, Counsel for the Respondent and to Paul A. Rosen, Esq., 3200 Cadillac Tower, Detroit, Michigan 48226, Counsel for Petitioner. I further certify that all parties required to be served have been served.
